INSURANCE—INTEREST OF BENEFICIARY—PRIOR DEATH.—One Julia Dunn held an accident policy in defendant company, naming as beneficiary her sister Mary, and in case of her prior death, the legal representatives of the insured. Both insured and her sister perished in the "Slocum disaster" off New York in 1904. The administrator of the insured brings suit on the policy. *Held,* that he could recover. *Dunn* v. *New Amsterdam Casualty Co.* (1910), 126 N. Y. Supp. 229.

In cases of common disaster there is no presumption of survivorship. *In re Willbor,* 20 R. I. 126, 51 L. R. A. 863. The law presumes that a condition once established remains until a change is actually shown. If the beneficiary first named in the above policy took a vested interest, it is incumbent upon the plaintiff to show a divesting, by affirmatively showing her prior death; on the other hand if the interest was contingent the burden is upon the representatives of the sister to show a vesting by showing she did not suffer a prior death. In other words the one upon whom the burden falls loses, there being no presumption, and no actual proof either way. The interest of the beneficiary in the policy of a mutual company or an "old line" company is vested in the absence of any clause giving the insured the right to change the beneficiary, 4 COOLEY, BRIEFS ON INS., 3755-3760. The policy in the present case did not reserve the right to change. In *U. S. Casualty Co.* v. *Kacer,* 169 Mo. 301, 58 L. R. A. 436, 92 Am. St. Rep. 641, the court lays down the doctrine that the interest of the beneficiary in a policy which read, "if surviving" was a vested interest, reasoning that the words "if surviving" had no effect on the interest created so long as the beneficiary lived, but merely operated to control the distribution in the event of a prior death. The court in the principal case is "unable to follow this reasoning." Looking at the face of the contract the conclusion in the Missouri case would seem to be the logical one. There is a definite statement sufficient to create a vested interest and which has uniformly been so held, "Indemnity shall be paid to the beneficiary named in the stub." Up to this point the meaning is clear, the interest is vested. Then follows a condition under which the interest will be divested, viz., prior death. As a matter of logic this seems clear enough but there arises a practical objection to this interpretation. It appears from the instrument itself that the insured wanted her own representative to have the proceeds, if her sister could not get them. The intention appears that the sister's representatives should not be benefited in preference to the insured's. True the intention of the insured can have no effect contrary to that which the law has given to the contract actually made. But when the actual legal effect is doubtful, a construction which harmonizes with the intention of the insured would seem equitable.

INSURANCE—STATEMENTS MADE BY APPLICANT—HOW CONSTRUED.—Plaintiff, as beneficiary, sued on an accident and health insurance policy issued by defendant company to one Wright, who in his written application for the policy, had been called upon to answer various interrogatories. These questions and answers preceded a stipulation that "if any of the statements made herein are not true, full and complete, all rights to the benefits named

in my policy shall be null and void, and all money paid by me to the association forfeited." To the following interrogatory, "Has any company, society, or association ever rejected your application, canceled your policy, or declined to renew same or refused compensation for disability?" Wright answered in the negative, although as was brought out at the trial of the principal case Wright had previously made application for a policy of life insurance in the North Western Mutual Life Insurance Company and had been rejected. *Held,* in the face of a strong dissenting opinion, the court dividing four to three, that the interrogatory applied only to health and accident insurance, and that the applicant was not bound to disclose the fact that he had applied for and been refused a policy of life insurance. *Wright* v. *Fraternities Health and Accident Assn.* (1910), — Me. —, 78 Atl. 475.

The theory on which the case was decided reflects the tendency of the courts to construe strictly against the insurance company any language intended to limit the liability of the insurer. The Maine court relied upon *Dineen* v. *Gen. Acc. Ins. Co.,* 126 App. Div. 167, 110 N. Y. Supp. 344, a case whose facts virtually are identical with those in the principal case. There the court lays down the rule that an insurance company must be held to a very strict rule when it is endeavoring to avoid payment on its insurance contract because of answers to inquiries or declarations which it has framed; and if any ambiguity exists, the construction will obtain most favorable to the insured. See also *Wallace* v. *Ins. Co.,* (C. C.) 41 Fed. 742; *Manufacturers' Accident Indemnity Co.* v. *Dorgan,* 58 Fed. 945, 7 C. C. A. 581, 22 L. R. A. 620. Despite the authority of the cases cited, the dissenting opinion delivered by EMERY, C.J., and concurred in by two of the other judges, would seem on principle to be correct. Whether the applicant has ever applied to other companies for insurance and has been rejected is regarded as material to the risk, and a false statement will avoid the policy. *March* v. *Met. Life Ins. Co.,* 186 Pa. 629; *Moore* v. *Mut. Reserve Fund Life Assn.,* 133 Mich. 526; *Silverman* v. *Empire Life Ins. Co.,* 24 Misc. Rep. 399, 53 N. Y. Supp. 407; *Am. Union Life Ins. Co.* v. *Judge,* 191 Pa. 484, 43 Atl. 374. And in the case last cited it was held that even though the applicant had not been informed of the rejection of his application in another company, his negative answer avoided the policy. Lack of knowledge or good faith would not avail the applicant, for a breach of warranty is fatal to the policy, even though the insured had no knowledge of the falsity constituting the breach and did not intend to deceive the insurer. *Swick* v. *Home Ins. Co.,* 23 Fed. Cases 550, *Life Assur. Soc.* v. *Llewellyn,* 58 Fed. 940, 7 C. C. A. 579. The rigid rule obtaining in marine insurance is modified in life insurance and the policy is not necessarily avoided by failure to disclose facts if no inquiry were made to elicit them. But, although where attention is called to specific diseases by specific questions, a failure to disclose a disease not named has been held not to amount to a fraudulent concealment, (*Mutual Benefit Life Ins. Co.* v. *Wise,* 34 Md. 582), yet if the insured knows or has good reason to believe that he has a disease, even though it be latent and undeveloped he is in duty bound to make it known, whether specifically questioned or not. *Endowment Rank Knights of Pythias* v. *Rosenfeld,* 92 Tenn. 508, 22 S. W.

204; *Vose* v. *Eagle Life and Health Ins. Co.*, 6 Cush (Mass.) 42. Where there is a warranty, as in the principal case, that the answers in the application are full and complete, as well as true, a failure to disclose all known facts is a concealment. *Conn. Mut. Life Ins. Co.* v. *Young*, 77 Ill. App. 440.

JUDGMENT—COLLATERAL ATTACK BASED ON WANT OF SERVICE—CONTRADICTING RECORD.—Action by the plaintiff to remove the clouds cast on his title to land by two judgments rendered against his vendor. As a ground of relief the plaintiff alleged that the latter was not served with notice of suit. The records of the judgments contained recitals of service. *Held*, this was a collateral attack and that the recitals of service in the records were conclusive collaterally. *Estey & Camp et al.* v. *Williams* (1911), — Tex. Civ. App. —, 133 S. W. 470.

Few questions in the law of judgments are more vital or interesting than that involved in the principal case. To estop an individual from showing (except in a direct proceeding), that he has not had his day in court strikes the mind at first blush as being slightly out of harmony with our preconceived ideas of right and liberty. But that such is the law is settled by an overwhelming weight of judicial authority. VANFLEET, COLLATERAL ATTACK, § 468. The recitals of service or other jurisdictional facts in the records of courts of inferior or limited jurisdiction are generally held unimpeachable. *Seefeld* v. *Duffer*, 179 Fed. 214; *Hume* v. *Conduitt*, 76 Ind. 598; while the contrary has been held the law by the courts of a few states. *Salladay* v. *Bainhill*, 29 Iowa 555; *Jones* v. *Terry*, 43 Ark. 230. The recital of jurisdictional facts, including service, in the record of a domestic court is almost universally held to be conclusive, collaterally. *Rumfelt* v. *O'Brien*, 57 Mo. 569; *Western Lumber & Mill Co.* v. *Merchants Amusements Co.*, — Cal. —, 108 Pac. 659. Despite this formidable array of authority the contrary doctrine has been accepted as the law by courts of the highest respectability. *Goudy* v. *Hall*, 30 Ill. 109. According to the latter view the records are accepted as prima facie true. *Ferguson* v. *Crawford*, 70 N. Y. 253; *Holly* v. *Munro*, 55 Wash. 311, 104 Pac. 508. Many arguments are advanced concerning the relative merits of the two conflicting doctrines. Affirmatively, it is asserted that a denial of the existence of such a conslusive presumption in favor of a record's verity would bring disrepute on our judiciary because of the consequent uncertainty of interests and titles based on judicial proceedings. Also, that there is rarely any merit in a collateral attack, and therefore the court should discountenance them in all cases. But against this it is said that a man should not have his rights determined without an opportunity of being heard. Nor that he should be bound because of an inviolable presumption that a court is powerless to assert a fiction. But the conclusion in the principal case is in full accord with the generally prevailing view.

JURY—RIGHT TO TRIAL BY JURY—DEPRIVATION OF RIGHT—CONSTITUTIONALITY OF QUALIFICATIONS—Defendant was convicted of a serious crime. On appeal to the supreme court from the judgment, he claimed that the require-